IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUIT NO.3313 OF 1986

Jamnadas Maganlal Randeria & Ors. ..Plaintiffs.

Vs.

Smt. Shirinbai Jeewanjee Currimjee & Ors. ..Defendants.

....

Mr. Shailesh Shah i/b Mr. Ruchir Tolat for the Plaintiffs.
Mr. Sachin Chandarang i/b M. K. Ambalal & Co. for Defendant No.15.

....

CORAM: DR. D.Y. CHANDRACHUD, J.

30th November, 2006.

P.C. :

1. The suit has been instituted for specific performance of an agreement to sell dated 12th July, 1980 as modified on 14th January, 1983. The subject matter of the agreement to sell is prescribed in the Schedule to the agreement as follows :

> "All that piece or parcel of partly Government Pension and Tax land partly Fazandari land admeasuring 360 square yards with the messuage tenement or dwelling house standing thereon situate in Third Kolbhat Lane or Kalbadevi Road in the City of Bombay in the Registration Sub-District of Bombay and registered in the Books of the Collector of Land Revenue under Old No.461 New Nos. A/2430 and 2435 Old Survey Nos. 23C and 24 and New Survey Nos.21/121 and 122 registered in the Books of the Collector of Municipal Rates and Taxes under C Ward Nos. 3052-3055 and 1808 Street Nos. 1-3 and 432-442 and Cadastral Survey No. 900 Bhuleshwar

> Division and bounded as follows: that is to say on or towards the North by the said Third Kolbhat Lane on or towards the South by the property of Morarji Mulraj Khatau and other on the East by the Kalbadevi Road and on or towards the West by the property of Damodar Govindji and others."

2. The suit was instituted by the three Plaintiffs who are tenants of Defendant Nos.1 to 14 in respect of the aforesaid property situated at Kalbadevi. A building by the name of Shrinath Bhavan has been constructed thereon. Plaintiffs 1 and 3 expired on 23rd November, 1992 and 16th November, 1992 respectively. The Plaintiffs have at all material times purported to represent all the tenants of premises situated in the building. Hence, upon the expiry of the First and Third Plaintiffs, the Second Plaintiff has continued to prosecute the proceedings acting for and on behalf of all the tenants. A resolution dated 23rd July, 2006 authorizing the Second Plaintiff to prosecute the suit has been produced and tendered on the record.

3. Defendant Nos.1 to 14 have not filed a written statement and by an order dated 30th June, 2006 the suit was directed to proceed against the aforesaid Defendants without their written

statement. However, considering the nature of the Suit, the Court directed that it was not considered appropriate to pass a decree under Order 8 Rule 10 of the Code of Civil Procedure without evidence. The Plaintiffs were directed to adduce evidence in support of their case by filing an affidavit in lieu of examination in chief of their witnesses. The Plaintiffs were also directed to file the original documents on which reliance is placed. Accordingly, the Second Plaintiff has tendered his affidavit in lieu of examination in chief. A Compilation of the original documents has also been filed which is taken on the record.

4. Under the terms of the agreement to sell, the total consideration payable was Rs.1.71 lacs of which an amount of Rs.17,101/- was paid at the time of execution while the balance was payable at the completion of the sale. The landlords were required to obtain a certificate under Section 230-A of the Income Tax Act and the requisite permission from the Urban Land Ceiling authorities. The case of the Plaintiffs is that a modification of the agreement was arrived at in a meeting held on 14th January, 1983 which came to be recorded in an advocate's letter dated 17th January, 1983. Thereafter an amount of Rs.1 lac was paid by

cheque on 20th January, 1983. The agreement was terminated by an advocate's notice to Defendants 1 to 14. The Suit for specific performance came to be instituted on 18th September, 1986.

5. Subsequent to the institution of the suit, the Plaintiffs were given notice of the fact that Defendant No. 15 had entered into an agreement to sell on 1st July, 1986 with Defendants 1 to 14. Accordingly Defendant No. 15 has been impleaded as a party to the suit and the plaint has been amended to incorporate a challenge to the validity of the agreement between the owners and Defendant No. 15. At the hearing of the suit, Consent Terms have been arrived at between the sole surviving Plaintiff and Defendant No.15 which are taken on the record and marked as 'X'. In so far as the surviving Plaintiff and Defendant No.15 are concerned, the dispute is settled in terms of the Consent Terms which are signed by the parties and by their respective advocates.

6. From the evidence which has been produced before the Court it will appear that a substantial part of the sale price has already been paid by the Plaintiffs. An amount of Rs.17,710/- was paid together with the execution of the agreement and an amount

of Rs.1 lac was paid thereafter on 20th January, 1983. The case of the Plaintiffs is that the building was in a dilapidated condition and between 1st June, 1985 and 31st March, 1994 an amount of Rs.13,06,300/- was incurred towards repair expenses by the tenants association. In addition an amount of Rs.27,12,000/- has been expended after 1st July, 1994. The tenants have therefore expended an amount of over Rs.40 lacs towards repairs. The tenants have also paid property taxes of the building and the case of the Plaintiffs is that the property had been abandoned by the landlords.

7. The suit has been instituted just over four months after the notice of termination. The suit is within limitation. The Plaintiffs have shown their readiness and willingness to comply with the terms of the agreement by paying a substantial part of the sale consideration and expending large amounts of money towards the repairs of the property and towards the property taxes payable to the Municipal Corporation. The execution of the agreement has not been disputed. In these circumstances, the claim of the Plaintiffs has been duly proved. Defendants 1 to 14 have not filed a written statement. The advocates who had entered appearance

on behalf of Defendants 1 to 14 informed Defendant No.15 that they were taking discharge in the proceedings for want of instructions.

8. In these circumstances, a decree will have to be passed as prayed. There shall accordingly be a decree in the following terms :

i) The Plaintiffs shall within a period of four weeks deposit with the Prothonotary & Senior Master an amount of Rs.53,999/- being the balance of the sale consideration payable under the agreement to sell dated 12th July, 1980 as modified on 14th January, 1983. In addition thereto, the Plaintiffs shall deposit with the Prothonotary & Senior Master an amount of Rs.53,900/- towards the balance of the rent that is due and payable upto 30th June, 1982. Conditional on the aforesaid deposit, there shall be a decree in terms of prayer clauses (a) and (b), against Defendants 1 to 14;

ii) Conditional on the aforesaid amount being deposited as directed, Defendants 1 to 14 shall execute a deed of conveyance in

favour of the Plaintiffs and/or in favour of the co-operative society if the society is registered. In the event that Defendants 1 to 14 fail and neglect to execute the deed of conveyance within a period of eight weeks from the date of deposit, the Prothonotary & Senior Master shall cause a deed of conveyance to be executed by an officer of the Court to be nominated by the Prothonotary & Senior Master;

iii) There shall be a decree in favour of the Plaintiffs against Defendant No.15 in terms of the Consent Terms dated 30th November, 2006 which are taken on record and marked as 'X'. The Undertakings contained in the Consent Terms are accepted.